APPEAL NO. 030482
APRIL 7, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq*. (1989 Act). A contested case hearing was held on January 13, 2003. With respect to the sole disputed issue before her, the hearing officer determined that the appellant (claimant) was not entitled to supplemental income benefits (SIBs) for the 3rd quarter because his unemployment was not a direct result of his impairment from his compensable injury. The claimant appeals on sufficiency of the evidence grounds, arguing that the evidence was sufficient to support that the claimant's unemployment was a direct result of his impairment from the compensable injury, thus entitling him to 3rd quarter SIBs. The respondent (self-insured) responds, urging that the hearing officer be affirmed or, in the alternative, that if we reverse the hearing officer on direct result, the case be remanded to the hearing officer to develop the evidence concerning a good faith search for employment.

DECISION

Affirmed.

It is undisputed that the claimant worked making model airplanes ranging from desk size to full size (used for wind-tunnel testing). His job required that he twist, pull, and lift, and perform other medium to heavy-duty work. The parties did not dispute that the claimant sustained a compensable injury, mostly concerning his cervical spine, on _____, when he fell from six feet up to the floor, landing on his back and knocking his head on the floor. The claimant's cervical spine injury ultimately required surgery to fuse C5 through C7. The claimant introduced medical records indicating that he had only been released to work by the self-insured-selected Independent Medical Examination (IME) doctor, and only within medium restrictions. All of the medical records, except those of the IME doctor, nearly fully restrict the claimant from employment. The parties did not dispute that the claimant was certified to have a 30% impairment rating. The IME doctor indicates that his recommendation is based upon a combination of his examination of the claimant, and of his reviewing a surveillance videotape of the claimant, showing the claimant lifting and removing boards from the back of a truck, and carrying the boards to another location. The IME doctor concluded that the claimant could return to doing medium labor for approximately six weeks, and then be released to work without restrictions.

At issue is whether the claimant's unemployment was a direct result of the impairment from the compensable injury. *See* Section 408.142 and Tex. W.C. Comm'n, 28 TEX. ADMIN. CODE § 130.102 (Rule 130.102). It was for the hearing officer, as the trier of fact, to resolve the conflicts and inconsistencies in the evidence and to determine what facts had been established. Garza v. Commercial Ins. Co., 508 S.W.2d 701 (Tex. Civ. App.-Amarillo 1974, no writ). We have said that "direct result" may be established by evidence that an injured employee sustained an injury with lasting effects and could

not reasonably perform the type of work being done at the time of the injury. Texas Workers' Compensation Commission Appeal No. 950376, decided April 26, 1995; Texas Workers' Compensation Commission Appeal No. 950771, decided June 29, 1995. After reviewing the surveillance videotape and observing that the claimant could lift, bend, and twist, the hearing officer determined that the claimant's unemployment was not the direct result of his impairment from his compensable injury, as he could reasonably perform the type of work being done at the time of the injury.

The hearing officer is the sole judge of the weight and credibility of the evidence. Section 410.165(a). The hearing officer was acting within her province as the fact finder in resolving the evidence in favor of the self-insured and nothing in our review of the record demonstrates that the hearing officer's determination is so against the great weight of the evidence as to be clearly wrong or manifestly unjust. Pool v. Ford Motor Company, 715 S.W.2d 629, 635 (Tex. 1986); Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986).

The hearing officer's decision and order is affirmed.

The true corporate name of the insurance carrier is **(a certified self-insured)** and the name and address of its registered agent for service of process is

SELF-INSURED
(ADDRESS)
(CITY), TEXAS (ZIP CODE).

_____
Terri Kay Oliver
Appeals Judge

CONCUR:

_____
Chris Cowan
Appeals Judge

_____
Gary L. Kilgore
Appeals Judge